

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of Kenosha County for the Repair of the Public Crossings of the Union Pacific Railroad Co. Tracks with CTH 'S' and CTH 'KR' in the Town of Somers, Kenosha County

9040-RX-1184

FINAL DECISION

By letter dated June 7, 2004, Kenosha County filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Union Pacific Railroad Co. (UP) has failed to maintain in good condition for public travel the public crossings of its tracks with CTH 'S' and CTH 'KR' in the Town of Somers, Kenosha County (crossing nos. 176 893V / MP 53.85 and 176 883P / MP 58.4).

The resolution requiring the repairs was adopted on February 24, 2004 and sent to the railroad on March 25, 2004.

Pursuant to due notice, public hearing was held in this matter on August 31, 2004 in Bristol, Wisconsin with hearing examiner Douglas S. Wood presiding. The Commissioner is issuing this final decision without an initial proposed decision. In uncontested cases the Commissioner may do so. While the UP did not appear at the hearing, the railroad did submit a letter on August 30 stating these two crossings would be repaired in September 2004.

Appearances:

Parties

Kenosha County, Petitioner
by
Gary Sipsma, Director
Kenosha County Division of Highways
19600 – 75th Street
PO Box 609
Bristol, WI 53142

No appearance by the Union Pacific Railroad Co.

Findings of Fact

THE COMMISSIONER FINDS:

CTH 'S' crossing no. 176 893V / MP 53.85

CTH 'S' is 36' wide with one 6'-wide shoulder and one 3'-wide shoulder. CTH 'S' carried 9100 ADT (average daily traffic) in 2002. The speed limit on CTH 'S' is 45 mph. CTH 'S' is a minor arterial. The CTH 'S' crossing is located about 0.8 miles west of STH 31.

According to the Federal Railroad Administration (FRA) database, the railroad currently operates about 14 through train movements per day over the crossing location at a maximum speed of 50 mph.

The crossing is in extremely poor condition for highway travel. The crossing surface is constructed with rubber panels. The rubber panels have failed in numerous locations. In addition the rubber panels between the rails are significantly higher than the rails. One of the rubber pads was removed and blacktop was filled in the resulting large gap. The asphalt patch is significantly lower than the surrounding rubber panels. There have been numerous reports of damage to highway vehicles caused by this crossing's condition. Drivers sometimes veer to the left or right to try and avoid the worst parts of the crossing, which creates a hazardous situation. The crossing needs replacement with a concrete panel crossing.

Under §86.12 Wis. Stats., the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. The railroad has failed to do so at this crossing. The crossing is at the end of its useful life and requires complete renewal. Due to the high volume of highway traffic the crossing requires a concrete-panel surface.

CTH 'KR' crossing no. 176 883P / MP 58.4

CTH 'KR' is 24' wide with 3'-wide shoulders. CTH 'KR' carried 6000 ADT (average daily traffic) in 2002. The speed limit on CTH 'KR' is 45 mph. CTH 'KR' is a major collector. The CTH 'KR' crossing is located about 0.75 miles west of STH 31.

According to the FRA database, the railroad currently operates about 14 through train movements per day over the crossing location at a maximum speed of 50 mph.

The crossing is in very poor condition for highway travel. The crossing surface was originally constructed with rubber panels. The rubber panels between the rails have been removed and replaced with timber planks. The timber planks are significantly higher than the rails. The existing crossing also does not extend all the way through the back of the shoulders. The crossing needs replacement with a concrete panel crossing.

Under §86.12 Wis. Stats., the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. The railroad has failed to do so at this crossing. The crossing is at the end of its useful life and requires complete renewal. Due to the high volume of highway traffic the crossing requires a concrete-panel surface.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain in good and safe condition for public travel the crossings at-grade of CTH 'S' and CTH 'KR' with its tracks in the Town of Somers, Kenosha County.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §86.12, Wis. Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **CTH 'S'** with its tracks by fully renewing the crossing with a **concrete panel crossing** in the Town of Somers, Kenosha County by **September 30, 2004** (crossing no. 176 893V / MP 53.85). The renewed crossing shall extend through the back of the shoulders.

2. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **CTH 'KR'** with its tracks by fully renewing the crossing with a **concrete panel crossing** in the Town of Somers, Kenosha County by **September 30, 2004** (crossing no. 176 883P / MP 58.4). The renewed crossing shall extend through the back of the shoulders.

3. That the **Union Pacific Railroad Co.** shall bear 100% of the cost of the crossing reconstruction and any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

4. That jurisdiction is retained.

Dated at Madison, Wisconsin, _____.

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads